

SERVED: May 31, 1995

NTSB Order No. EA-4365

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 19th day of May, 1995

_____	)	
Petition of	)	
	)	
AUGUST J. ARRIGONI,	)	
	)	
for review of the denial by	)	Docket SM-4154
the Administrator of the	)	
Federal Aviation Administration	)	
of the issuance of an airman	)	
medical certificate.	)	
_____	)	

**OPINION AND ORDER**

Petitioner has appealed from a written order issued by Administrative Law Judge William E. Fowler, Jr., on February 22, 1995. By that order, the law judge granted the Administrator's motion to dismiss petitioner's petition for review of the FAA's denial of his application for an airman medical certificate, and terminated this proceeding. As discussed below, petitioner's appeal is denied, and the dismissal is affirmed.

On September 2, 1993, petitioner applied for a second-class airman medical certificate. By letter dated November 27, 1994,

the FAA denied that application pursuant to 14 C.F.R.

67.15(d)(1)(i)(b) and (f)(2),<sup>1</sup> based on petitioner's medical history of psychosis (schizophrenia, paranoid type<sup>2</sup>), which is a specifically disqualifying condition. Petitioner sought the Board's review of this denial.

The Administrator moved to dismiss the petition for review, arguing that there was no need for a hearing in this case because it is clear that petitioner is permanently disqualified from

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<sup>1</sup> **§ 67.15 Second-class medical certificate.**

(a) To be eligible for a second-class medical certificate, an applicant must meet the requirements of paragraphs (b) through (f) of this section.

\* \* \*

(d) *Mental and neurologic* -- (1) *Mental*.

(i) No established medical history or clinical diagnosis of any of the following:

\* \* \*

(b) *A psychosis*.

\* \* \*

(f) *General medical condition*:

\* \* \*

(2) No other organic, functional or structural disease, defect, or limitation that the Federal Air Surgeon finds --

(i) Makes the applicant unable to safely perform the duties or exercise the privileges of the airman certificate that he holds or for which he is applying; or

(ii) May reasonably be expected, within two years after the finding, to make him unable to perform those duties or exercise those privileges;

and the findings are based on the case history and appropriate, qualified, medical judgment relating to the condition involved.

The Federal Air Surgeon's denial cited similar paragraphs of sections 67.13 and 67.17, which set forth the medical standards for first- and third-class certification.

<sup>2</sup> Schizophrenia, paranoid type, is a form of psychosis. Administrator v. Vanetta, 2 NTSB 1972, 1973 (1975).

airman medical certification in light of his established medical history or clinical diagnosis of psychosis. The Administrator relied on: 1) the contents of petitioner's medical records (attached to the motion to dismiss)<sup>3</sup> which, the Administrator contended, demonstrate that petitioner has an established medical history or clinical diagnosis of psychosis; and 2) the doctrine of res judicata, in that it has been established in a prior Board adjudication that petitioner has a medical history or clinical diagnosis of psychosis. The Administrator attached to his motion an oral initial decision issued by NTSB Administrative Law Judge John E. Faulk at the conclusion of an evidentiary hearing held on March 7, 1980, upholding the Administrator's emergency revocation of petitioner's pilot certificate based in part on petitioner's history or diagnosis of psychosis.<sup>4</sup> In that decision, the law judge specifically found that petitioner's medical records established that he had a medical history or clinical diagnosis of a psychosis, and was specifically disqualified from airman medical certification pursuant to section 67.15(d)(1)(i)(b). Administrator v. Arrigoni, SE-4557.<sup>5</sup>

In opposing the motion to dismiss, petitioner offered several disjointed comments on the contents of his medical file.

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<sup>3</sup> The Administrator points out that because he relied on matters outside the pleadings, his motion should have been considered as a motion for summary judgment.

<sup>4</sup> The revocation was also based on petitioner's falsification of several applications for medical certification.

<sup>5</sup> Petitioner did not pursue an appeal from that initial decision. Accordingly, it became final. 49 C.F.R. 821.43.

With regard to the 1980 Board proceeding in which Judge Faulk found he had a psychosis, petitioner claimed he had no memory of his attorney in that proceeding working on the case or discussing petitioner's appeal options with him. <sup>6</sup>

The law judge granted the Administrator's motion to dismiss.

After summarizing the information contained in petitioner's medical records, the law judge concluded that those records establish a medical history or clinical diagnosis of a psychosis.

He declined, however, to address the Administrator's second contention, that the petition for review was barred by the doctrine of res judicata, stating:

This conclusion [that petitioner has a psychosis] was reached by the undersigned without reference to the previous disposition of the question of petitioner's entitlement to medical certification by another of the Board's administrative law judges, which petitioner now attacks on the basis that he received inadequate representation at that earlier proceeding.

While we do not disagree with the law judge's conclusion that the medical records establish that petitioner has a medical history or clinical diagnosis of psychosis, we note that his

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<sup>6</sup> Petitioner also noted that the transcript of Judge Faulk's oral initial decision (which petitioner apparently mistook for a transcript of the entire proceeding) indicates that his attorney "only made two statements in defense of the Petitioner." Specifically, the attorney stated "No thank you, your honor" (in response to the law judge's offer to read the appeal rights into the record) and "I understand" (acknowledging the expedited time period for appeal). However, according to the Administrator, petitioner's attorney represented petitioner's interests during the hearing itself by cross-examining the FAA's medical witnesses, offering testimony from the petitioner, and presenting closing argument. In any event, the initial decision is final, and no longer subject to procedural challenge. Petition of Weiss, NTSB Order No. EA-3678 (1992).

analysis of the medical records was unnecessary and inappropriate in light of the previous Board proceeding adjudicating precisely this issue based on the same medical records.<sup>7</sup> We are puzzled by his decision to re-examine and recount in his order the same medical information already considered by Judge Faulk, and to reach his conclusion "without reference to the previous disposition." Indeed, the doctrine of res judicata is directly applicable to this case, and would appropriately have supported dismissal of petitioner's petition for review without more.<sup>8</sup> Accordingly, we uphold the law judge's grant of the Administrator's motion to dismiss, but substitute as a basis for that dismissal the doctrine of res judicata.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Petitioner's appeal is denied; and
2. The dismissal of the petition for review is affirmed, as discussed in this decision and order.

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIT, Member of the Board, concurred in the above opinion and order.

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<sup>7</sup> Petitioner submitted no new medical information in this proceeding, nor did he present any valid reason to disregard the decision in the prior proceeding.

<sup>8</sup> Petition of Parker, NTSB Order No. EA-4233 (1994) (doctrine of res judicata bars relitigation of issues concerning specifically disqualifying medical conditions that have been adjudicated in a prior case, and motions to dismiss are properly granted when such a prior adjudication exists); Petition of Weiss, NTSB Order No. EA-3678 (1992) (unappealed initial decision holding petitioner has a history of psychosis is administratively final, and no longer subject to procedural challenge; petition to review subsequent denial of certification barred by doctrine of res judicata).